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November 19, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: MB Docket 09-182, 2010 Quadrennial Review –Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MB Docket 07-294, Promoting Diversification of Ownership in the Broadcasting Services; MB Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission’s rules, Free Press submits this notice regarding an *ex parte* communication in the above referenced proceedings.

On November 15, 2012, Matt Wood and Lauren Wilson of Free Press and Angela Campbell of the Institute for Public Representation (“IPR”) met with Commissioner Mignon Clyburn, Dave Grimaldi, Chief of Staff for Commissioner Clyburn, and Joseph Dworak of the Commissioner’s office. Separately, the Free Press representatives spoke by telephone with Alex Hoehn-Saric, Policy Director for Commissioner Rosenworcel. The subject of both of these meetings was the Commission’s Quadrennial Media Ownership Review and the continuing need to assess broadcast ownership levels among women and people of color carefully and thoughtfully before releasing a final order.

We began by stressing that the Commission must act on a basis of a record containing comprehensive data about broadcast ownership. One of the bases that the Third Circuit Court of Appeals cited for reversing the Commission’s last quadrennial review order was the agency’s failure to consider the impact of that action on ownership by women and people of color. The second basis for reversal was that the Commission did not afford the public a meaningful

opportunity to comment on material that was placed in the record at the last minute.¹ Thus, we urged the Commission not to act without first fully considering how any rule changes might impact diverse ownership, or without giving the public an opportunity to comment on its Report on Ownership of Commercial Broadcast Stations released on November 14, 2012.²

We next discussed the impact relaxation of cross-ownership rules would have on diverse communities. Recently released Form 323 data showed that people of color and women remain grossly underrepresented in the media marketplace.³ As Free Press pointed out in our March 2012 comments on the *2010 Review*, allowing increased media consolidation almost certainly would have an adverse effect on ownership levels among women and people of color. The data suggest that relaxation of ownership rules leads to loss of diverse ownership, and show that the level of consolidation in broadcast markets correlates with the level of diverse ownership in those markets.⁴

In those comments, Free Press summarized findings regarding changes in diversity levels following two earlier changes in broadcast ownership laws and rules: Congress's decision to increase the national television ownership cap from 25 percent to 35 percent in 1996; and the FCC's decision in 1999 to permit local television duopolies. We identified seventeen stations that were sold to "non-minority" owners after those policy changes were enacted, and noted that nine of these seventeen transactions would not have been permitted under the prior rules. Turning to separate data on diversity among radio licensees, Free Press analysis demonstrated that female- and minority-owned stations thrive in markets that are less concentrated, but that chances for diversity of ownership are significantly lower in concentrated markets.⁵ If, as has been reported in trade press, the FCC repeals both the radio-television and radio-newspaper broadcast ownership rules, then the already small number of radio stations owned by minorities and women will be subject to acquisition from in-market stations, thus decreasing diversity and competition, and making new entry more difficult.

Moreover, an analysis of current Form 323 data also showed that relaxing the newspaper broadcast cross-ownership rule ("NBCO"), specifically for newspaper-television combinations, is once again likely to decrease diverse ownership. Of the full power commercial TV stations licensed to ethnic or racial minorities in the United States, nearly 40 percent are non-top-4

¹ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) ("*Prometheus IP*") ("As ownership diversity is an important aspect of the overall media ownership regulatory framework, we re-emphasize that the actions required on remand should be completed within the course of the Commission's 2010 Quadrennial Review of its media ownership rules." (internal citation omitted)); see *Prometheus Radio Project v. FCC*, 373 F.3d 372, 420-21 (3d Cir. 2004) ("By failing to mention anything about the effect this change would have on potential minority station owners, the Commission has not provided a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored." (internal citation omitted)).

² *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 07-294 and 09-182, Report on Ownership of Commercial Broadcast Stations (2012).

³ *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 07-294 and 09-182, Report on Ownership of Commercial Broadcast Stations (2012). With respect to Full Power TV, women account for 6.8 percent of ownership and minorities account for 5 percent of ownership.

⁴ See Comments of Free Press, MB Dockets 09-182, 07-294 (filed Mar. 5, 2012), at section I(A)(2).

⁵ *Id.*

ranked stations in a top 20 Nielsen Designated Market Area (“DMA”). It follows that the Commission’s proposed rule change to allow newspaper owners’ acquisition of stations fitting this category would disproportionately affect these licensees. When coupled with the impact of the upcoming incentive auctions, this means that over the next several years, the U.S. would see a sharp decline in diversity of ownership.

We also expressed concern that the framework for studying whether critical information needs of communities were being met was still under development. Even if the framework is effective, it is unclear whether the FCC has sufficient funding to conduct the studies it believes are necessary, and it would be difficult for outside groups to obtain funding to do such studies. Also, by the time the research is completed, it is not clear what the FCC would be able to do about any shortfall because markets will be even more consolidated. Hence, any measures the Commission might take pursuant to future *Adarand* studies, while commendable, would be rendered moot. Even perfectly crafted diversity policies could not work if no diverse owners and no ownership opportunities remain in the marketplace.

Therefore, we urged the Commission to avoid compounding appallingly low levels of ownership diversity by relaxing these important protections.

In accordance with the Commission’s rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,

_____/s/____

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cc: Commissioner Mignon Clyburn
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